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Tengku Adnan bin Tengku Mansor v Public Prosecutor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO WA-05(SH)-440–12 OF 2020
SURAYA OTHMAN, ABU BAKAR JAIS AND AHMAD NASFY JJCA
29 OCTOBER 2021

C *Criminal Procedure — Appeal — Appeal against conviction and sentence — Minister received payment of RM2m — Whether elements of the offence proven beyond reasonable doubt — Whether appellant was a public servant — Whether there was consideration for the payment — Whether the payment was a political donation — Whether the payment was deemed to benefit the*
D *appellant — Whether payment was solicited by appellant — Whether trial judge had erred in law and fact — Whether trial judge failed to consider unchallenged direct evidence — Whether conviction safe — Whether appellate intervention warranted — Penal Code s 165*

E This was the appellant's appeal against his conviction and sentence for an offence under s 165 of the Penal Code. The appellant was a Minister in the Federal Cabinet and the secretary general of the dominant political party, UMNO (United Malays National Organisation). He was also the controlling shareholder of a company known as Tadmansori Holding Sdn Bhd
F ('Tandmansori'). In April 2013, the Ministry of Federal Territories launched a project called 'Rumah Mampu Milik Wilayah Persekutuan (RUMAWIP)'. At this juncture, the appellant had requested Tan Sri Chai Kim Kong ('SP19'), a director of a company known as Aset Kayamas Sdn Bhd ('Aset Kayamas') to participate in the project. SP19 duly obliged. Eventually after a few meetings
G and discussions, Aset Kayamas and Dewan Bandaraya Kuala Lumpur ('DBKL') entered into a sale and purchase agreement dated 1 July 2016 for the purchase of land. The appellant had, sometime during the course of the project, requested SP19 for a 'political donation', of around RM5m to RM6m to be utilised for two upcoming by-elections. The appellant had requested
H SP19 to make the contribution payable to Tadmansori, instead of UMNO. SP19 contributed RM2m vide a cheque payable to Tadmansori. The said cheque was handed over by SP19 personally to the appellant two days before the by-elections were scheduled to be held. The cheque was duly credited into Tadmansori's bank account. The accused was then charged under s 165 of the
I Penal Code ('the PC'). At the end of the prosecution's case, the trial judge found that: (a) the accused was paid by the Government of Malaysia to perform public duties in his capacity as the Minister of the Federal Territories and was, therefore, a public servant; (b) the accused received RM2m for himself when such amount was credited into Tadmansori's bank accounts through Aset

Kayamas' cheque and that was the end of the money trail and no payment was made to UMNO from Tadmansori; (c) there was no consideration for the monies received; and (d) the accused knew that SP19 had connections with his official function as the Minister for the Federal Territories. Satisfied that the prosecution had established a prima facie case, the appellant was called to enter his defence. In his defence, the accused submitted that, inter alia: (i) as part of his responsibility as UMNO's treasurer, he had solicited SP19 for donations to finance the by-elections and to support his contention that the donations were for the by-elections, copies of the budget for the expenses were produced through Datuk Rizalman and Datuk Zakaria, who were both involved in the by-elections; (ii) the RM2m was for UMNO's benefit and he requested for SP19 to issue the cheque in Tadmansori's name as he would be using his funds first and later be reimbursed by UMNO; and (iii) he had no knowledge why there were no duplicate copies of the UMNO receipt in the receipt book. The accused further added that he was already a successful businessman before joining the Cabinet and, according to him, RM2m was mere 'pocket change'. The appellant was thus found guilty and was convicted. He was sentenced to 12 months of imprisonment and a fine of RM2m and in default six months' imprisonment. The appellant appealed against the conviction and sentence on the grounds, inter alia, that the trial judge had erred in law and in fact in failing to consider: (A) that the prosecution had failed to prove beyond reasonable doubt a key element in the charge that the RM2m was paid to the appellant for himself; (B) that the evidence of the prosecution witnesses (SP19, SP6 and SP23) supported the defence that the sum of RM2m was a political donation to UMNO for the two by-elections; and (C) that the failure of the prosecution to re-examine SP19 on his evidence in cross-examination that the sum of RM2m was a political donation to UMNO, amounted to an acceptance of SP19's testimony. The main issue that arose for determination was whether the trial judge correctly re-evaluated the evidence adduced by the appellant by weighing against the evidence adduced by the prosecution at the end of prosecution's case.

Held, allowing the appeal:

(1) **(per Abu Bakar Jais JCA, dissenting)** It was not disputed that the appellant was at the material time the Minister for Federal Territories and was a public servant pursuant to s 21(i) of the Penal Code. The appellant received salaries and allowances from the government. and was deemed as a public servant. In any event, when the counsel for the appellant submitted before the Court of Appeal, he did not say the first element was not proven. Therefore, the first element had been proven by the prosecution (see paras 5–9).

(2) **(per Abu Bakar Jais JCA, dissenting)** For the second element, the valuable thing was the cheque of RM2m. The cheque was given by SP19 and handed personally to the appellant. SP19 was a friend of the

A appellant and had known each other for more than 30 years. The cheque was issued by Aset Kayamas, whom SP19 was a director to Tadmansori, where the appellant owned 99.99% of the shares since its incorporation. The said cheque was deposited into and cleared into Tadmansori's bank account. Since RM2m went into this account, the money was for the B appellant himself, as he was practically the owner of Tadmansori. Therefore, the trial judge had correctly found that the element had been proven (see paras 10–15).

(3) **(per Abu Bakar Jais JCA, dissenting)** The cheque came from Aset C Kayamas to Tadmansori. There were no business dealings between these two companies. When the cheque was cleared and RM2m was credited into the bank account of Tadmansori, nothing was given in return by Tadmansori or appellant to Aset Kayamas or SP19. There was no consideration given by Tadmansori or the appellant for the RM2m D received. For the third element, there was no dispute that even UMNO did not give consideration as there was no reason for UMNO to give consideration since UMNO never received the money. There was no record that Tadmansori had given the money to UMNO after receiving the cheque. The appellant pocketed the money but no one gave anything E in return to SP19 or Aset Kayamas. Therefore, the third element had also been proven (see paras 18–21).

(4) **(per Abu Bakar Jais JCA, dissenting)** For the fourth element, the prosecution only needed to show the appellant was aware that SP19 and not even Aset Kayamas had connections with his official function as the F Federal Territories Minister. There was no need for the prosecution to prove that the appellant had in fact used his position to assist Aset Kayamas in its dealings with his official function. In this regard, among others, the appellant knew that SP19 and Aset Kayamas were interested in the Federal territories Ministry's scheme for an affordable housing G project. It was the appellant who requested SP19 to participate in this project. This was sufficient to prove the fourth element ie, the appellant knew SP19 had connection with his official functions. Therefore, with the evidence that had been highlighted, the prosecution had also proven the last element of s 165 of the Penal Code (see paras 23–24 & 27).

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(5) **(per Abu Bakar Jais JCA, dissenting)** It was correct for the learned judge to accept part of the evidence of SP19, while rejecting his testimony that the RM2m was a political donation. In essence, with the kind of defence narrated, the four elements for the offence as explained had been I proven beyond reasonable doubt. The appellant, by the defence tendered, had not raised a reasonable doubt on any of these elements (see paras 69 & 71).

(6) **(per Abu Bakar Jais JCA, dissenting)** The trial judge had correctly reviewed all the evidence tendered at the end of prosecution and at the

end of defence for maximum evaluation. The trial judge was satisfied that the prosecution had proven its case beyond reasonable doubt. The approach by the learned trial judge was proper and correct. He did not err in the steps that were taken in convicting the appellant. There was no reason to disturb the sentence of 12 months imprisonment and fine of RM2m, in default six months imprisonment that was imposed by the trial judge. Based on the prosecution's case and the defence as narrated, the appellant had not raised a reasonable doubt on the prosecution's case (see paras 72–74).

(7) **(per Ahmad Nasfy JCA, majority)** The learned justices were in agreement with the learned trial judge that the power to order proceedings in camera must be exercised sparingly and it was a case where it was expedient in the interests of public safety, public security and property, and not in the interest of an individual. In the present factual matrix, the learned justices did not find that it was expedient that a trial in camera be allowed and that the apprehension that an exposure of one's wealth would expose oneself to becoming a victim of a crime, without more, was not sufficient to attract the protection of s 15 of the Courts of Judicature Act 1964 ('the CJA') (see para 110).

(8) **(per Ahmad Nasfy JCA, majority)** One of the essential elements of the offence which must be proved by the prosecution was that the sum of RM2m was paid to the appellant for himself and not for any other person or entity. If the key element in the charge was not proven beyond reasonable doubt, then the appellant ought to be acquitted and discharged without his defence being called. The trial judge's conclusion that the ingredient had been established beyond reasonable doubt, was untenable. The evidence of the prosecution witnesses SP19, SP6 and SP23 had supported the defence's contention that the sum of RM2m was a political donation to UMNO for the two by-elections. The trial judge erred in law and in fact in failing to consider this evidence (see paras 127–128).

(9) **(per Ahmad Nasfy JCA, majority)** Another crucial issue was that the trial judge had failed to consider the failure of the prosecution to re-examine the prosecution's star witness, SP19, on his evidence in cross-examination that the sum of RM2m was a political donation to UMNO. The failure by the prosecution to re-examine on this pivotal issue amounted to an acceptance of the witness testimony. In similar vein, no suggestion was made by the prosecution that SP19 was dishonest or untruthful. No attempts too were made by the prosecution to impeach SP19 or treat him as a hostile witness. Whilst a judge was entitled to accept one part of the evidence and disregard the other part of the evidence, curiously the trial judge had decided to reject the evidence of SP19 pertaining to the receipt, that too by extrapolation of evidence not

proved, that the receipt was 'new and crisp' which the same was not even faintly suggested by the prosecution. The failure of the learned judge to direct his mind to the failure of the prosecution to re-examine SP19 on his evidence in cross-examination that the RM2m was a political donation to UMNO amounted to a non-direction which rendered the conviction unsafe (see paras 135–136).

(10) **(per Ahmad Nasfy JCA, majority)** In respect of the official receipt, SP19 in re-examination reiterated that he received the receipt on 16 or 17 June 2016. This direct evidence was neither contradicted nor disproved and thus remained unchallenged by the prosecution. Thus, the prosecution's submission that the official receipt was only issued in November 2018 after the appellant was arrested and that the official receipt was a forged document remains unproved. The trial judge should have adopted an inference in favour of the defence. The failure on the part of the trial judge to consider the foregoing unchallenged direct evidence amounted to a serious misdirection which warranted appellate intervention (see paras 137 & 139).

(11) **(per Ahmad Nasfy JCA, majority)** The crediting of the cheque into the account of Tadmansori did not lead to an irresistible conclusion that the appellant had committed the offence charged, and this per se, was insufficient to convict the appellant as, upon a proper evaluation, this evidence amounted to no more than circumstantial evidence, which did not point irresistibly to the guilt of the appellant. Upon full scrutiny of the prosecution's evidence, the defence contention on the purpose for which the money was to be utilised was not a mere invention by the appellant. At any rate it created a doubt as to whether the appellant had accepted or received the money for himself. It was trite that when there were two possible conclusions that could be made from a set of facts, an inference favourable to the accused should be made. In the circumstances, there were serious misdirection and non-directions committed by the trial judge on the law and evidence warranting appellate intervention. As such, it was unsafe to sustain the conviction on the charge (see paras 141–142).

[Bahasa Malaysia summary

Ini adalah rayuan perayu terhadap sabitan dan hukuman atas kesalahan di bawah s 165 Kanun Keseksaan. Perayu adalah seorang Menteri dalam Kabinet Persekutuan dan setiausaha agung sebuah parti politik dominan, UMNO (Pertubuhan Kebangsaan Melayu Bersatu). Beliau juga merupakan pemegang saham pengendali sebuah syarikat yang dikenali sebagai Tadmansori Holding Sdn Bhd ('Tandmansori'). Pada April 2013, Kementerian Wilayah Persekutuan melancarkan projek yang dinamakan 'Rumah Mampu Milik Wilayah Persekutuan (RUMAWIP)'. Pada ketika ini, perayu telah meminta Tan Sri Chai Kim Kong ('SP19'), pengarah sebuah syarikat yang dikenali

sebagai Aset Kayamas Sdn Bhd ('Aset Kayamas') untuk mengambil bahagian dalam projek tersebut. SP19 bersetuju. Akhirnya selepas beberapa pertemuan dan perbincangan, Aset Kayamas dan Dewan Bandaraya Kuala Lumpur ('DBKL') memasuki perjanjian jual beli bertarikh 1 Julai 2016 untuk pembelian sekeping tanah. Perayu telah, pada suatu ketika semasa projek tersebut, meminta SP19 untuk 'sumbangan politik', sekitar RM5 juta hingga RM6 juta untuk digunakan bagi dua pilihan raya kecil akan datang. Perayu telah meminta SP19 untuk membayar sumbangan kepada Tadmansori, bukannya UMNO. SP19 menyumbang RM2 juta melalui cek yang dibayar kepada Tadmansori. Cek tersebut telah diserahkan sendiri oleh SP19 kepada perayu dua hari sebelum pilihan raya kecil dijadualkan diadakan. Cek telah dikreditkan ke dalam akaun bank Tadmansori. Tertuduh kemudiannya didakwa di bawah s 165 Kanun Keseksaan ('KK'). Pada akhir kes pendakwaan, hakim perbicaraan mendapati bahawa: (a) tertuduh telah dibayar oleh Kerajaan Malaysia untuk melaksanakan tugas awam atas kapasitinya sebagai Menteri Wilayah Persekutuan dan oleh itu, merupakan seorang penjawat awam; (b) tertuduh menerima RM2 juta untuk dirinya sendiri apabila jumlah tersebut dikreditkan ke dalam akaun bank Tadmansori melalui cek Aset Kayamas. Itu adalah penghujung jejak wang dan tiada bayaran dibuat kepada UMNO daripada Tadmansori; (c) tiada balasan bagi wang yang diterima; dan (d) tertuduh tahu bahawa SP19 mempunyai kaitan dengan fungsi rasminya sebagai Menteri bagi Wilayah Persekutuan. Berpuas hati bahawa pihak pendakwaan telah membuktikan kes prima facie, perayu dipanggil untuk membela diri. Dalam pembelaannya, tertuduh menghujahkan, antara lain: (i) sebagai sebahagian daripada tanggungjawabnya sebagai bendahari UMNO, beliau telah meminta SP19 sumbangan bagi membiayai pilihan raya kecil. Bagi menyokong hujahnya bahawa sumbangan tersebut adalah untuk pilihan raya kecil, salinan bajet untuk perbelanjaan tersebut dikeluarkan melalui Datuk Rizalman dan Datuk Zakaria, yang kedua-duanya terlibat dalam pilihan raya kecil; (ii) RM2 juta adalah untuk kepentingan UMNO dan beliau meminta SP19 mengeluarkan cek atas nama Tadmansori kerana beliau akan menggunakan dananya dahulu dan kemudiannya dibayar balik oleh UMNO; dan (iii) beliau tidak mempunyai pengetahuan mengapa tiada salinan pendua resit UMNO dalam buku resit. Tertuduh seterusnya menambah bahawa beliau adalah seorang ahli perniagaan yang berjaya sebelum menyertai Kabinet dan, menurutnya, RM2 juta hanyalah 'wang poket'. Perayu kemudiannya didapati bersalah dan telah disabitkan kesalahan. Beliau dijatuhi hukuman penjara 12 bulan dan denda RM2 juta dan jika gagal enam bulan penjara. Perayu merayu terhadap sabitan dan hukuman atas alasan, antara lain, bahawa hakim perbicaraan telah terkhilaf dari segi undang-undang dan sebenarnya gagal mempertimbangkan: (A) bahawa pihak pendakwaan telah gagal untuk membuktikan tanpa keraguan munasabah elemen utama dalam pertuduhan bahawa RM2m telah dibayar kepada perayu untuk dirinya sendiri; (B) bahawa keterangan saksi-saksi pendakwaan (SP19, SP6 dan SP23) menyokong pembelaan bahawa jumlah RM2 juta adalah sumbangan politik kepada

A B C D E F G H I

A UMNO untuk dua pilihan raya kecil tersebut; dan (C) bahawa kegagalan pihak pendakwaan untuk memeriksa semula SP19 atas keterangannya semasa pemeriksaan balas bahawa jumlah RM2 juta tersebut adalah sumbangan politik kepada UMNO, terjumlah kepada penerimaan keterangan SP19. Isu utama yang timbul untuk penentuan adalah sama ada hakim bicara telah B menilai semula dengan betul keterangan yang dikemukakan oleh perayu dengan menimbangkan terhadap keterangan yang dikemukakan oleh pihak pendakwaan pada akhir kes pendakwaan.

C **Diputuskan**, membenarkan rayuan:

(1) **(oleh Abu Bakar Jais HMR, menentang)** Ia tidak dipertikaikan bahawa perayu adalah pada masa material Menteri Wilayah Persekutuan dan merupakan penjawat awam menurut s 21(i) Kanun Keseksaan. Perayu menerima gaji dan elaun daripada kerajaan dan disifatkan sebagai D penjawat awam. Dalam apa juga keadaan, apabila peguam perayu berhujah di hadapan Mahkamah Rayuan, beliau tidak mengatakan elemen pertama tidak dibuktikan. Oleh itu, elemen pertama telah dibuktikan oleh pihak pendakwaan (lihat perenggan 5–9).

E (2) **(oleh Abu Bakar Jais HMR, menentang)** Bagi elemen kedua, perkara yang berharga ialah cek RM2 juta. Cek tersebut diberikan oleh SP19 dan diserahkan sendiri kepada perayu. SP19 merupakan rakan perayu dan telah mengenali antara satu sama lain selama lebih 30 tahun. Cek itu dikeluarkan oleh Aset Kayamas, yang mana SP19 adalah pengarah F kepada Tadmansori, di mana perayu memiliki 99.99% saham sejak diperbadankan. Cek tersebut telah didepositkan ke dalam dan dijelaskan ke dalam akaun bank Tadmansori. Oleh sebab RM2 juta masuk ke dalam akaun ini, wang tersebut adalah untuk perayu sendiri, kerana beliau adalah pemilik Tadmansori. Oleh itu, hakim bicara telah membuat G dapatan tepat bahawa elemen tersebut telah dibuktikan (lihat perenggan 10–15).

(3) **(oleh Abu Bakar Jais HMR, menentang)** Cek tersebut datang dari Aset Kayamas ke Tadmansori. Tiada urusan perniagaan antara kedua-dua syarikat ini. Apabila cek tersebut dijelaskan dan RM2 juta telah H dikreditkan ke dalam akaun bank Tadmansori, tiada apa-apa pun diberikan sebagai balasan oleh Tadmansori atau perayu kepada Aset Kayamas atau SP19. Tiada balasan diberikan oleh Tadmansori atau perayu untuk RM2 juta yang diterima. Untuk elemen ketiga, tidak timbul pertikaian bahawa UMNO pun tidak memberi balasan kerana I tiada sebab untuk UMNO memberi balasan memandangkan UMNO tidak pernah menerima wang tersebut. Tidak ada rekod bahawa Tadmansori telah memberikan wang tersebut kepada UMNO selepas menerima cek tersebut. Perayu telah mengambil wang tersebut tetapi tiada sesiapa yang memberikan apa-apa sebagai balasan kepada SP19 atau

Aset Kayamas. Oleh itu, elemen ketiga juga telah dibuktikan (lihat perenggan 18–21). A

(4) **(oleh Abu Bakar Jais HMR, menentang)** Bagi elemen keempat, pihak pendakwaan hanya perlu menunjukkan perayu mempunyai pengetahuan bahawa SP19 dan juga Aset Kayamas tidak mempunyai kaitan dengan fungsi rasminya sebagai Menteri Wilayah Persekutuan. Tidak ada keperluan bagi pihak pendakwaan untuk membuktikan bahawa perayu sebenarnya telah menggunakan kedudukannya untuk membantu Aset Kayamas dalam urusannya dengan fungsi rasminya. Sehubungan itu, antara lain perayu mengetahui bahawa SP19 dan Aset Kayamas berminat dengan skim Kementerian Wilayah Persekutuan untuk projek rumah mampu milik. Perayulah yang meminta SP19 menyertai projek ini. Ini sudah memadai untuk membuktikan elemen keempat iaitu, perayu tahu SP19 mempunyai kaitan dengan fungsi rasminya. Oleh itu, dengan keterangan yang telah dikemukakan, pihak pendakwaan juga telah membuktikan elemen terakhir s 165 Kanun Keseksaan (lihat perenggan 23–24 & 27). B C D

(5) **(oleh Abu Bakar Jais HMR, menentang)** Ia adalah tepat bagi hakim yang bijaksana untuk menerima sebahagian daripada keterangan SP19, dengan menolak keterangannya bahawa RM2 juta tersebut adalah sumbangan politik. Pada dasarnya, dengan jenis pembelaan yang diceritakan, empat elemen bagi kesalahan seperti yang dijelaskan telah dibuktikan melampaui keraguan munasabah. Perayu, berdasarkan pembelaan yang dikemukakan, tidak menimbulkan keraguan munasabah terhadap mana-mana elemen ini (lihat perenggan 69 & 71). E F

(6) **(oleh Abu Bakar Jais HMR, menentang)** Hakim bicara telah menyemak dengan betul kesemua keterangan yang dikemukakan pada akhir pendakwaan dan pada akhir pembelaan untuk penilaian maksimum. Hakim bicara berpuas hati bahawa pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah. Pendekatan oleh hakim bicara yang bijaksana adalah wajar dan tepat. Beliau tidak terkhilaf dalam langkah yang diambil bagi mensabitkan perayu. Tiada sebab untuk mengganggu hukuman penjara 12 bulan dan denda RM2 juta, jika gagal enam bulan penjara yang dijatuhkan oleh hakim bicara. Berdasarkan kes pendakwaan dan pembelaan seperti yang diceritakan, perayu tidak menimbulkan keraguan munasabah terhadap kes pendakwaan (lihat perenggan 72–74). G H

(7) **(oleh Ahmad Nasfy HMR, majoriti)** Hakim yang bijaksana bersetuju dengan hakim bicara yang arif bahawa kuasa untuk memerintahkan prosiding dalam rakaman mesti dijalankan dengan berhati-hati dan ia adalah kes di mana ia adalah suai manfaat demi kepentingan keselamatan awam, keamanan awam dan harta benda, dan bukannya untuk kepentingan individu. Dalam matriks fakta semasa, hakim yang I

bijaksana tidak mendapati bahawa adalah wajar perbicaraan dalam rakaman dibenarkan dan kebimbangan bahawa pendedahan kekayaan seseorang akan mendedahkan dirinya menjadi mangsa jenayah, tanpa lebih, adalah tidak mencukupi untuk menarik perlindungan s 15 Akta Mahkamah Kehakiman 1964 ('AMK') (lihat perenggan 110).

(8) **(oleh Ahmad Nasfy HMR, majoriti)** Salah satu elemen penting kesalahan yang mesti dibuktikan oleh pihak pendakwaan ialah jumlah RM2 juta telah dibayar kepada perayu untuk dirinya sendiri dan bukan untuk mana-mana orang atau entiti lain. Jika elemen utama dalam pertuduhan tidak dibuktikan melampaui keraguan munasabah, maka perayu sepatutnya dibebaskan dan dilepaskan tanpa pembelaan dipanggil. Kesimpulan hakim bicara bahawa ramuan tersebut telah dibuktikan melampaui keraguan munasabah, tidak boleh dipertahankan. Keterangan saksi pendakwaan SP19, SP6 dan SP23 telah menyokong hujahan pembelaan bahawa jumlah RM2 juta adalah sumbangan politik kepada UMNO untuk dua pilihan raya kecil tersebut. Hakim bicara terkhilaf dari segi undang-undang dan sebenarnya gagal mempertimbangkan keterangan ini (lihat perenggan 127–128).

(9) **(oleh Ahmad Nasfy HMR, majoriti)** Satu lagi isu penting ialah hakim bicara gagal mempertimbangkan kegagalan pihak pendakwaan untuk memeriksa semula saksi utama pendakwaan, SP19, mengenai keterangannya dalam pemeriksaan balas bahawa jumlah RM2 juta adalah sumbangan politik kepada UMNO. Kegagalan pihak pendakwaan untuk memeriksa semula isu penting ini terjumlah kepada penerimaan keterangan saksi. Dalam nada yang sama, tiada cadangan dibuat oleh pihak pendakwaan bahawa SP19 adalah tidak jujur atau tidak benar. Tiada percubaan dibuat oleh pihak pendakwaan untuk mencabar kebolehpercayaan SP19 atau menganggapnya sebagai saksi belot. Walaupun hakim berhak menerima satu bahagian keterangan dan mengabaikan bahagian keterangan yang lain, sebaliknya hakim bicara telah memutuskan untuk menolak keterangan SP19 yang berkaitan dengan resit, ia juga merupakan ekstrapolasi keterangan yang tidak dibuktikan, bahawa resit itu adalah 'baru dan rapuh' yang mana tidak dicadangkan oleh pihak pendakwaan. Kegagalan hakim yang bijaksana untuk mengarahkan fikirannya kepada kegagalan pihak pendakwaan untuk memeriksa semula SP19 terhadap keterangannya dalam soal balas bahawa RM2 juta adalah sumbangan politik kepada UMNO terjumlah kepada salah arah yang menyebabkan sabitan menjadi tidak selamat. (lihat perenggan 135–136).

(10) **(oleh Ahmad Nasfy HMR, majoriti)** Berkenaan dengan resit rasmi, SP19 dalam pemeriksaan semula menegaskan bahawa beliau menerima resit tersebut pada 16 atau 17 Jun 2016. Keterangan langsung ini tidak

bercanggah mahupun tidak dibuktikan dan dengan itu kekal tidak dicabar oleh pihak pendakwaan. Justeru, hujahan pihak pendakwaan bahawa resit rasmi hanya dikeluarkan pada November 2018 selepas perayu ditangkap dan bahawa resit rasmi adalah dokumen palsu masih tidak dibuktikan. Hakim bicara sepatutnya menerima pakai inferens yang memihak kepada pembelaan. Kegagalan pada pihak hakim bicara untuk mempertimbangkan keterangan langsung yang tidak dicabar di atas merupakan salah arah yang serius yang mewajarkan campur tangan rayuan (lihat perenggan 137 & 139).

(11) **(oleh Ahmad Nasfy HMR, majoriti)** Pengkreditan cek ke dalam akaun Tadmansori tidak membawa kepada kesimpulan yang tidak dapat disangkal bahawa perayu telah melakukan kesalahan yang didakwa, dan ini tidak mencukupi untuk mensabitkan perayu kerana, apabila penilaian yang sewajarnya, keterangan ini terjumlah tidak lebih daripada keterangan mengikut keadaan, yang tidak menunjukkan tanpa sangkalan kesalahan perayu. Setelah meneliti sepenuhnya keterangan pihak pendakwaan, penghujahan pembelaan mengenai tujuan wang tersebut digunakan bukanlah rekaan perayu semata-mata. Walau apa pun ia menimbulkan keraguan sama ada perayu telah menerima atau mengambil wang tersebut untuk dirinya sendiri. Ia adalah nyata apabila terdapat dua kemungkinan kesimpulan yang boleh dibuat daripada satu set fakta, inferens yang memihak kepada tertuduh harus dibuat. Dalam keadaan tersebut, terdapat salah arah yang serius dan ketidakarahan yang dilakukan oleh hakim bicara mengenai undang-undang dan keterangan yang mewajarkan campur tangan rayuan. Oleh itu, adalah tidak selamat untuk mengekalkan sabitan atas pertuduhan (lihat perenggan 141–142).]

Cases referred to

Alan Soh Heng Liang v PP [2020] MLJU 2151, CA (refd)
Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1, FC (refd)
Khee Thuan Giap v PP [2019] 4 MLJ 651, CA (refd)
Khoon Chye Hin v PP [1961] 1 MLJ 105b, CA (refd)
Lim Guan Eng v PP [1998] 3 MLJ 14, CA (refd)
Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (refd)
Mohd Khir bin Toyo v PP [2015] 5 MLJ 429; [2015] 8 CLJ 769, FC (refd)
Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67, FC (folld)
Ong Teik Thai v PP [2017] 4 MLJ 421, FC (refd)
PP v Bernadito L Alenjandro Jr [2015] 1 LNS 1507, CA (folld)
PP v Dato' Saidin bin Thamby [2012] 3 MLJ 476, CA (refd)
PP v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1, HC (refd)
PP v Kasmin bin Soeb [1974] 1 MLJ 230 (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (folld)
Samundee Devan a/l Kerishnan Muthu v PP [2009] 1 MLJ 697, CA (refd)
Wong Swee Chin v PP [1981] 1 MLJ 212, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 15, 15(1)
Criminal Procedure Code ss 180(1), (4), 182A
Penal Code ss 21(i), 165

Appeal from: Criminal Trial No WA-45–1–01 of 2019 (High Court, Kuala Lumpur)

Tan Hock Chuan (Satharuban a/l Sivasubramaniam, Michelle Lai Mei See and Aaron Lau Peng Mun with him) (Tan Hock Chuan & Co) for the appellant.
Asmah bt Musa (Haderiah bt Siri, Rullizah bt Abdul Majid, Nurshuhaida bt Zainal Azahar and Natasha bt Abdul Azis with her) (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Abu Bakar Jais JCA (delivering dissenting judgment of the court):

[1] The appellant, in this case, was charged for the offence under s 165 of the Penal Code. This section states as follows:

> Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

[2] The above is understandably too long to digest. However, the learned High Court judge ('HCJ') had assisted us through his grounds of judgment to appreciate the four elements of s 165 of the Penal Code. The four elements in the context of the present case are as follows:

(a) the appellant being the Minister for Federal Territories was a public servant;

(b) the appellant obtained a valuable thing for himself;

(c) there was no consideration for the valuable thing he obtained; and

(d) the appellant knew Tan Sri Chai ('Chai') had connection with his official functions.

[3] Proving the bare minimum of all the four elements would mean that the appellant should be convicted for the offence charged, in the absence of a defence that could raise a reasonable doubt. It is quite straightforward in that sense.

[4] I shall now go on to evaluate whether there was evidence before the High Court on each of the elements mentioned.

THE APPELLANT BEING THE MINISTER FOR FEDERAL TERRITORIES WAS A PUBLIC SERVANT

[5] With regard to this element, during the trial, it was not disputed that the appellant was at the material time the Minister for Federal Territories. The appellant also cannot be denied was a public servant pursuant to s 21(i) of the Penal Code which states as follows:

> The words 'public servant' denote a person falling under any of the descriptions hereinafter following:
>
> ...
>
> every officer whose duty it is, as such officer, to take, receive, keep or expend any property, on behalf of government, or to make any survey, assessment, or contract on behalf of government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of government, or to make, authenticate, or keep any document relating to the pecuniary interests of government, or to prevent the infraction of any law for the protection of the pecuniary interests of government, *and every officer in the service or pay of government, or remunerated by fees or commission for the performance of any public duty* (Emphasis added.)

[6] In respect of the above, there was evidence tendered in court that the appellant received salaries and allowances from the government.

[7] The learned HCJ also rightly referred to the Federal Court case of *Mohd Khir bin Toyo v Public Prosecutor* [2015] 5 MLJ 429; [2015] 8 CLJ 769 in saying a person in the service or pay of the government, or is remunerated by fees or commission for the performance of public duty, is deemed as a public servant. I am bound by the Federal Court's decision.

[8] In any event, when the counsel for the appellant submitted before us at the Court of Appeal, he did not say the first element was not proven.

[9] Based on all the above points, I agree with the learned HCJ that the first element had been proven by the prosecution.

A THE APPELLANT OBTAINED A VALUABLE THING FOR HIMSELF

[10] For this element, the valuable thing is the cheque of RM2m. Logically, nobody has argued that this is not a valuable thing.

B

[11] The cheque was given by Chai and handed personally to the appellant. Chai is a friend of the appellant. They have known each other for more than 30 years. The cheque was issued by Aset Kayamas, a housing development company. Chai owns this company and is a director of the same.

C

[12] The cheque was made out to Tadmansori. This is a company where the appellant owns 99.99% of the shares (worth RM99,999,996) since the incorporation of the same. Evidence was tendered that the appellant was the decision-maker for this company. Practically the appellant is the owner of this
D company.

[13] After receiving the cheque from the Chai, the appellant instructed his driver to deposit the cheque into Tadmansori's bank account. The cheque was later cleared and RM2m was credited into Tadmansori's bank account.

E

[14] Since RM2m went into this account, the money was for the appellant himself, as he is practically the owner of this company. As stated, he owns almost all the shares of this company except a small share worth about RM4. The appellant brother is the owner of this RM4 share.

F

[15] I am therefore with the learned HCJ that this second element had been proven based on the reasons explained.

G **[16]** In any event, what is important to be considered regarding this element is that the appellant contended he did not receive the money RM2m for himself. Instead, he said that the money was a political donation for UMNO, his political party. The money was needed for the expenses of UMNO for two by-elections in Sg Besar and Kuala Kangsar.

H

[17] This is the defence of the appellant, contending this element was not proven because the money was not for himself. I shall come back to this defence after I explain the two other elements and the evaluation of the evidence
I regarding these two elements.

THERE WAS NO CONSIDERATION FOR THE VALUABLE THING HE OBTAINED

[18] The cheque came from Aset Kayamas to Tadmansori. There were no business dealings between these two companies.

[19] When the cheque was cleared and RM2m was credited into the bank account of Tadmansori, nothing was given in return by Tadmansori or appellant to Aset Kayamas or Chai. There was no consideration given by Tadmansori or the appellant for the RM2m received.

[20] For this third element, there is no dispute that even UMNO did not give consideration. There is no reason for UMNO to give consideration since UMNO never received the money. There is no record that Tadmansori had given the money to UMNO after receiving the cheque. The appellant pocketed the money but who gave anything in return to Chai or Aset Kayamas? Answer — nobody.

[21] Therefore, the third element had also been proven.

THE APPELLANT KNEW CHAI HAD CONNECTION WITH HIS OFFICIAL FUNCTIONS

[22] With regards to the fourth and last element, the prosecution must prove the appellant knew that Chai had connections with his official functions.

[23] The prosecution only needs to show the appellant was aware that Chai and not even Aset Kayamas had connections with his official function as the Federal Territories Minister. There is no need for the prosecution to prove the appellant had in fact used his position to assist Aset Kayamas in its dealings with his official function.

[24] In this regard, among others, the appellant knew that Chai and Aset Kayamas were interested in the Federal Territories Ministry's scheme for an affordable housing project. It was the appellant who requested Tan Sri Chai to participate in this project. There is also evidence that Chai met the appellant personally at least on three occasions regarding this scheme for an affordable housing project. The appellant also wrote minutes on a few of Aset Kayamas's letters regarding the project. The evidence narrated, would be sufficient to prove this element ie the appellant knew Chai had connection with his official functions.

[25] Whether there was evidence the appellant even got his subordinates to act on these letters and what were the actions taken by his subordinates are

immaterial. This is because for this element, as stated, the prosecution only needs to prove the appellant knew Chai had connection with his official functions. And the evidence that I have narrated earlier, would be sufficient to prove this element. This is what I meant by proving the bare minimum as I stated earlier.

[26] It is most important to note that for this element, the prosecution has no duty to prove the appellant had obtained a valuable thing ie RM2m in return for a favour by him for Chai or Aset Kayamas. The appellant need not do a favour for them. It is sufficient for the appellant to know that Chai and Aset Kayamas had connection with his official function.

[27] Therefore, with the evidence that have been highlighted, the prosecution had also proven this last element of s 165 of the Penal Code.

THE END OF THE PROSECUTION'S CASE

[28] At the end of the prosecution's case, the learned HCJ had correctly subjected the evidence adduced for maximum evaluation. After the evaluation, he was not wrong to find a prima facie case against the appellant. He was also right to find credible evidence to prove every element of the offence, which if unrebutted would warrant a conviction against the appellant. He therefore correctly called for the defence after the evaluation of the evidence at this stage.

DEFENCE

[29] As indicated, the defence of the appellant is the money of RM2m is not for himself. He said that the money was a political donation for UMNO. The money was needed for UMNO expenses for two by-elections in Sg Besar and Kuala Kangsar.

[30] First, when the appellant received the RM2m, he did not give it to UMNO. As stated, neither did Tadmansori give the money to UMNO.

[31] The appellant said he had used his own money for UMNO for the by-elections. Therefore, he need not give the money to UMNO. Thus, there are no records from UMNO showing it had received the money. The appellant had taken the money.

[32] The assertion by the appellant that he had used his own money and therefore need not give the same to UMNO is with respect far-fetched. This assertion would mean the appellant could act according to his wishes as to the money received. This would also mean the appellant has no obligation to even inform UMNO of the money that had been handed to him. It also amounts to

a situation where the appellant is able to ignore other UMNO members on the need for accountability for any moneys received. All these would render the appellant's story that he had used his own money for the by-elections, with respect, highly unlikely.

[33] In fact, it is in evidence, in at least eight instances UMNO did repay the advances made by the appellant when he had used his own money. But for the present case, there is no evidence that UMNO repaid him for the RM2m purportedly used by him for UMNO for the by-elections. Thus, by deduction, it only shows that it is not true for the appellant to say he had used his own money for UMNO in this case. Had he used his own money, UMNO would have repaid him this money, just like so many instances in the past. Unfortunately, as stated there is no evidence from UMNO to this effect.

CHAI (SP19)

[34] Chai was a prosecution's witness. However, in the trial, during cross-examination by counsel for the appellant, Chai quite dramatically took out his wallet and from the wallet he took out a single UMNO's Receipt No 376241 dated 14 June 2016. This was to support that the money was a political donation for UMNO and not for the appellant. On the receipt was written 'RM2m — sumbangan PRK Kuala Kangsar dan Sungai Besar' ('contribution for Kuala Kangsar and Sungai Besar by-elections'). The appellant told the court he had signed on the receipt in his capacity as UMNO Federal Territory Liaison Chairman.

[35] The prosecution was surprised by Chai's action. They did not expect this. They thought Chai did not have this receipt because when the investigation officer ('IO') testified, the IO said Chai never informed him of the receipt during the investigation although the IO's team had requested Chai to give any documents pertaining to the cheque of RM2m to the IO.

[36] If indeed Chai was given the receipt in appropriate time, he would have told the IO so during the investigation. Instead, it became too convenient for him to come up with the receipt many months after the investigation and as a result, the receipt was only produced in court. Chai said he did not show it earlier as the IO did not pursue the matter further. This is difficult to believe. As stated, the IO's team had requested Chai to give any documents pertaining to the cheque of RM2m to the IO. This happened way before the trial, during the investigation itself. If indeed Chai wants the court to believe the money was a political donation, he would have handed the receipt much earlier before the trial to the IO.

[37] The receipt must also be viewed not only from Chai's perspective or understanding that it was for political donation. First, Chai did not have personal knowledge that the money was indeed for political donation. At best, he knew of it as political donation because the appellant told him so. For example, I can tell you I want some money from you for my local mosque but you can never be sure what I will use it for.

[38] Besides, the statement by Chai that he was requested by the appellant for political donation remains only as that. Nothing more, nothing less. So even if the prosecution did not re-examine Chai further on this, it certainly could not mean that the RM2m was indeed money for political donation and not personally for the appellant. As stated, this is because Chai knew it as political donation purely because the appellant told him so. The prosecution's case is not shaken even if it is true that Chai was not challenged in re-examination that the money was indeed a political donation. There is nothing worthy from such re-examination because Chai knew it as political donation only because the appellant said so. It is opposed to a defence of alibi for instance. If a witness comes to court and says an accused was not at the scene of the crime and did not commit the murder, as the accused was at that material time with him, obviously the prosecution needs to challenge the witness in re-examination. It affects the prosecution greatly if the witness is not re-examined. This is different when Chai testified the appellant told him that he needed the money as political donation. Even when he was not re-examined, this has not affected the prosecution's case because the best that stood from Chai's evidence for the appellant, is that he was only informed that the money was meant as political donation. Thus, a court needs to be vigilant to note what was actually said by a witness in court. The testimony of a witness on a specific matter might mean little, if not nothing compared to the totality of evidence from his overall testimony, testimonies of all witnesses and exhibits that must be assessed, evaluated and weighed. The court must not compartmentalise and separate a piece of evidence, without reasons, coming from a witness without verifying that evidence with other evidence before the court.

DATUK MOHD HASBI (SP6) AND INVESTIGATING OFFICER (SP23)

[39] The appellant said that both Datuk Mohd Hasbi and the investigating officer ('IO') who were prosecution's witnesses also supported his evidence that the RM2m was a political donation.

[40] Datuk Mohd Hasbi, Tadmansori's chief operating officer, testified that the appellant told him the money was a political donation. The IO in turn said from his investigation, Chai and the appellant also told him that the money was a political donation.

[41] Just because Datuk Mohd Hasbi was informed by the appellant the money was a political donation, this could not mean the money was not for the appellant himself. Datuk Mohd Hasbi said it was a political donation merely because the appellant told him so. The same goes for the IO. He was informed by Chai that it was a political donation and Chai knew it as a political donation because the appellant said so. And of course the appellant told the IO it was a political donation. It should not be expected that the appellant will say the money was meant for himself.

[42] Both Datuk Mohd Hasbi and the IO do not have personal knowledge it was a political donation. At best, the evidence of Datuk Mohd Hasbi and the IO was that the appellant told them the money was a political donation.

POLITICAL DONATION

[43] It was self-serving for the appellant to say that he had requested Tan Sri Chai to issue the cheque to Tadmansori instead of UMNO because he had used his own money for UMNO. With respect, he was unable to prove that he had used the RM2m for UMNO.

[44] It is also untrue for the appellant to say that the money was given as political donation and not for him personally. This is because it was never proven that there was any record that UMNO was given the money. Neither was it proven that the money was used for the by-elections by the appellant, though he said he had used his own money for that purpose. The appellant did not show credible evidence that the amount of RM2m was used for these by-elections.

[45] For politicians to say moneys received were meant as political donations, there must be proper accounting. The very least is to show proof that the political donation was properly debited and credited. In the case where the politicians come from political parties (as opposed to independents), such as in this case, the more reasons, that political parties must show the details of this accounting. Especially when you come from a political party with financial means. If your political party can spend millions for a political cause, surely your political party can at the very least, engage accountants or those qualified to properly account for the moneys you say you had received as political donations. Otherwise, politicians can gleefully say there was no reason to doubt the moneys received as it was simply a political donation. After all, why should politicians be treated differently from others? If others need to answer and explain the source of their income, likewise politicians must be subjected to the same standard. Besides, in this case, RM2m is not a small amount. It may be a small amount to the appellant but nobody had testified this is a small amount for UMNO.

A THE RECEIPT

[46] The receipt was produced in court to support the defence that the money was for political donation to UMNO. However, the receipt itself was seriously doubtful for several reasons apart from what have been stated earlier.
B

[47] During the trial, the learned HCJ viewed and scrutinised the receipt itself. He gave the finding that the receipt was crisp and new despite after four years in Chai's possession. Unless this finding is totally unfounded, it should not at the appellate stage be disturbed. The learned HCJ, as the trial judge is
C entitled to make this finding after visual and physical inspection of the receipt. A judge has a duty to observe and make an assessment of all exhibits tendered before him in court. If he is prevented from doing that, he might as well not be there. With his finding, he is entitled to believe the receipt could not have been
D issued as contended by Chai and the appellant.

[48] The learned HCJ had also appropriately taken into account the receipt book from which the receipt was issued. In respect of this receipt book, the learned HCJ noted that the appellant gave conflicting evidence regarding the
E receipt from this receipt book. In his witness statement, the appellant said he had no knowledge why there was no duplicate copy to the receipt and that it was not his duty to handle the receipt book. But when he was cross-examined, he said he had pulled out the duplicate copy from the receipt book. This
F contradiction is material and the learned HCJ had correctly taken this into account. If the appellant was not responsible to handle the receipt book, he too had no business to pull out the duplicate copy from the receipt book.

[49] On that score too, the circumstances of the presence of the signature of
G the appellant on the receipt is another event too convenient to be true. He signed the receipt as UMNO Federal Territory Liaison Chairman. One is justified to question why the receipt from UMNO headquarters, was signed by someone in UMNO Wilayah Persekutuan. It would be more logical that someone in authority at UMNO headquarters would have signed the receipt
H instead of the appellant.

[50] The appellant also could not simply say that he had used the receipt from UMNO headquarters because Federal Territory UMNO where he was liaison chairman, does not have receipts books. This is far too convenient for
I him to say. Such a statement with respect seems hollow. It is difficult to accept Federal Territory UMNO could not afford a receipt book. As most people would know, even lesser establishments (eg some sundry shops) do have receipt books.

[51] He also said he signed the receipt in question from UMNO headquarters as the Federal Territory UMNO Liaison Chairman. This is also unacceptable. You sign your own receipt. Not the receipt of others. With respect, this is another instance of an afterthought.

THE BY-ELECTIONS

[52] The appellant said he had the responsibility of raising funds for the two by-elections and he had used his own money. The two by-elections were in Sungai Besar, Selangor and Kuala Kangsar, Perak and not in Federal Territory. He was Federal Territory UMNO Liaison Chairman. He was also not at that time the treasurer of UMNO. He also said each UMNO state liaison would form their own teams for a by-election.

[53] It is more likely the appellant has no or little responsibility to raise funds for the by-elections in Selangor and Perak because he was not the liaison chairman of these states. He was, as stated only the Federal Territory UMNO Liaison Chairman. As stated also, the appellant even explained that each UMNO state liaison would form their own team. This would show the statement that he had to raise funds for the two by-elections as most likely untrue.

DATUK RIZALMAN AND DATUK ZAKARIA

[54] Datuk Rizalman bin Mokhtar ('Datuk Rizalman') and Datuk Zakaria bin Dullah ('Datuk Zakaria') were defence's witnesses for the appellant.

[55] Datuk Rizalman testified to support the appellant evidence he had used his own money for the by-election at Sungai Besar. The appellant said Datuk Rizalman was in charge of the by-election in Sungai Besar, Selangor.

[56] Datuk Rizalman showed a one page budget sheet of twelve items as expenses which were purportedly spent for the by-election in Sungai Besar. He said he prepared this based on memory as he had disposed of the original and the supporting receipts. The amount came up to RM1,013,200.

[57] Datuk Zakaria also came to court producing another one page budget sheet for ten items amounting to RM1,007,600 for the two by-elections. He too did not keep the receipts supporting the budget.

[58] Both brought the budget sheets for their testimonies in court after four years since the by-elections. They no longer have the receipts supporting the budget sheets but they could come up with more or less the exact amount spent for the two by-elections. This is too good to be true. Their abilities to recall

things from sheer memory could not be that powerful. Most people normally could not even remember how much was spent a few days earlier, what more four years ago. Especially when you do not have the receipts and invoices to back you up and your expenditure runs to a substantial sum.

[59] Further, as can be seen, the budget sheets amount slightly more than RM2m. It is just too convenient for the two gentlemen to arrive at this figure. Too high above two million, will prompt some to ask why only claimed RM2m? Too low below two million will also attract others to ask why claimed so much when the expenses are way below RM2m? So slightly above RM2m collectively should be just about right to show in the budget sheets. It is to accord with what Chai gave the appellant. Of course, it must also not be exactly two million. It is too much of a coincidence if it does.

[60] As these budget sheets are more than suspicious, it could not be said the testimonies of Datuk Rizalman and Datuk Zakaria had raised a reasonable doubt on the prosecution's case.

[61] The appellant also said he gave RM1,013,200 cash to Datuk Rizalman and RM1,007,600 to Datuk Zakaria for these by-elections. This, with respect is unbelievable. Give cash? It would be quite difficult to accept that cash for such a large amount had been given to the two gentlemen.

[62] Even if the appellant still wanted to give the money to the two Datuks, the very least was for the appellant to use cheques or transfer the money through his bank accounts and not cash. It would be much safer and logical. So, the statement of the appellant that Datuk Rizalman and Datuk Zakaria received cash amounting to more than RM2m from him, with respect could not be accepted.

[63] Further, the learned HCJ correctly noted that the appellant could not show the source of the cash he gave to Datuk Rizalman and Datuk Zakaria. As stated, the RM2m went into Tadmansori's bank account. However, there was no withdrawal from this account that was shown to be given to Datuk Rizalman and Datuk Zakaria. Neither was it shown that the cash came from other sources.

DATUK MOHD RAFI

[64] The only other witness for the appellant was his former political secretary, Datuk Mohd Rafi bin Alii Hassan ('Datuk Mohd Rafi').

[65] Datuk Mohd Rafi gave evidence he took the cash of RM1,013,200 from the appellant and handed the same to Datuk Rizalman.

[66] The testimony of Datuk Mohd Rafi could not be true based on the reasons given earlier on the budget sheet regarding this amount. Explanation has also been given it could not be true that for this large amount of money, cash would be handed to Datuk Rizalman.

[67] As a consequence, on the whole, the appellant with respect was unable to show that he did spent or used RM2m or so of his own money for the by-elections.

ASSESSMENT OF THE DEFENCE

[68] In respect of the defence, the totality of evidence must be taken into account by the court. At the risk of repetition, a witness's particular testimony, must generally also be consistent with other parts of his evidence and also the evidence of other witnesses. In fact, even outside court, you check all available facts and not merely believe what one will tell you. It does not take a judge to appreciate this. You take the whole tree. Not just the flowers and leaves. The word 'generally' here should also be noted. There is of course an exception. For instance, it is permitted that a part of the evidence of a witness be separated from the rest. When a witness tells a lie, his whole evidence should not be totally rejected. In *Khoon Chye Hin v Public Prosecutor* [1961] 1 MLJ 105b it is explained as follows:

> If a witness demonstrably tells lies on one or two points then it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinised with great care and indeed with suspicion. To say, however, that because a witness has been proved a liar on one or two points then the whole of his evidence 'must in law be rejected' is to go too far and is wrong.

[69] Thus, based on the above, it was correct for the learned HCJ to accept part of the evidence of Chai, while rejecting his testimony that the RM2m was a political donation.

[70] On the defence of the appellant as a whole, like a jigsaw puzzle, you try to attach the pieces together. If you could not do it, a piece or two might be missing. As a result, the jigsaw puzzle could not be solved. For instance, the first piece is the defence that the money is a political donation and not for the appellant himself. Based on the explanation earlier, even this first piece is tattered. The edges are not smooth to be attached to other pieces of the puzzle. The second piece is the receipt. However, as explained the receipt is highly suspicious and therefore should not be accepted. Thus, the second piece could not be attached to the first piece. You go on to take the other pieces (including the budget sheets and the purported cash given by the appellant to the Datuk Rizalman and Datuk Zakaria) and try to do the same. If you still could not do it, your jigsaw puzzle crumbles, just like the defence here.

[71] In essence, with the kind of defence narrated, the four elements for the offence as explained earlier have been proven beyond reasonable doubt. The appellant, by the defence tendered, had not raised a reasonable doubt on any of these elements.

AT THE END OF DEFENCE

[72] At the end of the defence, the learned HCJ reviewed all the evidence tendered at the end of prosecution and at the end of defence for maximum evaluation. After subjecting the evidence to maximum evaluation, the learned HCJ was satisfied that the prosecution had proven its case beyond reasonable doubt. The approach by the learned HCJ in this regard was proper and correct. He too did not err in the steps that were taken in convicting the appellant.

SENTENCE

[73] On sentence, I would say there is no reason to disturb the sentence of 12 months imprisonment and fine of RM2m, in default six months imprisonment that was imposed by the learned HCJ. In deciding the appropriate sentence, among others, the learned HCJ correctly took into account the service to the nation by the appellant. The learned HCJ was also mindful of the gravity of the offence committed before imposing sentence.

[74] Based on the prosecution's case and the defence as narrated, the appellant had not raised a reasonable doubt on the prosecution's case. Hence, with respect, I would dismiss the appeal and affirm the conviction and sentence against the appellant.

Ahmad Nasfy JCA (delivering majority judgment of the court):

INTRODUCTION

[75] The appellant was charged before the Kuala Lumpur High Court, which charge reads as follows:

> That you, on 14 June 2016, at CIMB Bank Bhd, Pusat Bandar Damansara Branch, Level 1, Lot A4, Block A, Pusat Bandar Damansara, in the Federal Territory of Kuala Lumpur, being a public servant, Kuala Lumpur, being a public servant, to wit, the Minister for Federal Territories, accepted for yourself a valuables thing without consideration, to wit, the sum of RM2m from one Chai Kim Kong by way of a Hong Leong Islamic Bank Cheque No 136822 belonging to Aset Kayamas Sdn Bhd that was deposited into CIMB Bank Account No 8001179747 belonging to Tadmansori Holding Sdn Bhd in which you had an interest, when you knew that Aset Kayamas Sdn Bhd had a connection with your official function, and you have thereby committed and offence punishable under s 165 of the Penal Code.

[76] At the end of the trial, the appellant was found guilty and was convicted. He was sentenced to 12 months of imprisonment and a fine of RM2m and in default six months' imprisonment.

[77] The appellant appealed against the conviction and sentence. We heard the appeal. After carefully considering all the submissions, in writing and that made orally by both parties, we came to a decision, which is not unanimous. By a majority we allowed the appeal. Our learned brother, Abu Bakar Jais JCA dissents and rendered his brief grounds in affirming the decision of the court below. We have, in announcing our decision earlier rendered our broad grounds. The following are our full grounds for the majority. We will, where necessary comment on the brief grounds furnished by our learned brother, as at the time of writing these grounds, we have not the advantage of reading his full grounds. Needless to say, where we find it necessary, we will provide a response thereto, following the precedent by the majority in Federal Court in the case of *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145.

THE CASE IN THE HIGH COURT

[78] The accused in the court below and the appellant before us, was a Minister in the Federal Cabinet. At all material time he helmed the Ministry of Federal Territories. At the same time, he was also the secretary general of the dominant political party, UMNO ('United Malays National Organisation'). He was also the controlling shareholder of a company known as Tadmansori Holding Sdn Bhd ('Tandmansori').

[79] In April 2013, the Ministry of Federal Territories launched a project called 'Rumah Mampu Milik Wilayah Persekutuan (RUMAWIP)'. It was touted as an urban affordable housing project. It targeted to build 80,000 units by 2018. To carry out this project, land will be required. It is common knowledge that the City Hall or its Malay acronym DBKL ('Dewan Bandaraya Kuala Lumpur') had massive land banks, parts of which will be utilised for this project. Private companies will then be invited to submit proposals to carry out the project on the identified lands.

[80] At this juncture enter the other important persona, named in the charge as Tan Sri Chai Kim Kong. He is the director of a number of companies including a company known as Aset Kayamas Sdn Bhd. From the facts, it is not in dispute that the appellant had requested Tan Sri Chai ('SP19') to participate in the project. SP19 duly obliged and had through several companies that he owned including Aset Kayamas participated.

[81] It is appropriate at this juncture to state that the prosecution, in its opening statement, stated that it will adduce evidence and prove that the accused then, now the appellant, had requested for a political donation from Tan Sri Chai. We pause here to mention that it is curious that the prosecution had emphasised the words 'political donation' without ascribing the extent and import of that phrase.

[82] Returning to the narrative, through a letter dated 26 January 2015, Aset Kayamas proposed to purchase DBKL's land as part of the project. Eventually after a few meetings and discussions, Aset Kayamas and DBKL entered into a sale and purchase agreement dated 1 July 2016 for the purchase of the land.

[83] It is in evidence that the appellant had, sometime during the course of this project, requested SP19 for what he said to be a political donation, of around RM5m to RM6m to be utilised for two upcoming by-elections for the district of Kuala Kangsar in Perak and Sungai Besar in Selangor respectively which elections were scheduled to be held simultaneously on the 18 June 2016.

[84] The appellant had requested SP19 to make the contribution payable to Tadmansori. SP19 in his evidence stated that he did not know who the company belongs to. He also said that it did not cross his mind to inquire from the appellant why the payment was to be made to Tadmansori and not to UMNO. SP19 decided to contribute RM2m as, according to him, that was all that he could afford to give at that time. He then instructed his staff to prepare the cheque and signed it. The cheque, a Hong Leong Islamic Bank Cheque No 136822 was dated 14 June 2016 (P15) and was made payable to Tadmansori. SP19 personally handed over this cheque personally to the appellant on 14 June 2016, two days before the by-elections were scheduled to be held.

[85] The appellant then handed the cheque to his driver, on the same day the driver with instruction to deposit the cheque into Tadmansori's bank account with CIMB Bank. The cheque was duly presented on the 14 June 2016 and credited into Tadmansori's CIMB Bank's account on the 16 June 2016. There is no dispute about this fact as this was confirmed by a bank officer with CIMB Bank (SP2) and Tadmansori's Assistant Accounts Manager (SP5).

[86] SP5 and the chief operating officer of Tadmansori (SP6) testified that Tadmansori neither made any payments to UMNO nor had any dealing with Aset Kayamas.

[87] Upon being asked by the learned counsel for the appellant in the course of cross-examination whether he had received any letter of acceptance/acknowledgment or receipts on the payment made by Aset

Kayamas, SP19 responded positively and took out the receipt from his wallet purported to be an UMNO's official Receipt No 376241 dated 14 June 2016 for the sum of RM2m (D74) on which document it was written 'sumbangan PRK Kuala Kangsar dan Sungai Besar' ('UMNO receipt').

[88] SP19 claimed that the appellant had given him the UMNO receipt two days after he had given the cheque (P15). Upon revelation of the UMNO receipt during the trial, an officer from MACC went to UMNO's headquarters at the Putra World Trade Centre and seized three unused receipt books (IDD77, IDD78 and IDD79) and one receipt book from which the UMNO receipt was allegedly issued (D74, P76). Farahdzilah bt Abd Kadir (SP21), the deputy head of the finance department at UMNO's headquarters testified that the appellant had signed the receipt (D74) in his capacity as the 'Pengerusi Badan Perhubungan UMNO Wilayah Persekutuan' and that the donation was for Badan Perhubungan UMNO Wilayah Persekutuan and not for the UMNO headquarters.

[89] The prosecution then focused on the receipt book from which UMNO receipts were allegedly issued from. This receipt book contained the duplicate copies of receipts from No 376201–376250. According to Farahdzillah (SP21) ordinarily, a receipt would be issued to a person concerned and that one duplicate copy would remain in the receipt book. The duplicate copy of the UMNO receipt, however, was conspicuously missing from this receipt book. SP21 could not explain it and stated that the receipt books were easily accessible. The prosecution then shifted its focus on the duplicate receipts that were issued before and after the UMNO receipt. The receipt issued before the UMNO receipt was the Receipt No 376240 dated 12 November 2018 and one after that was the Receipt No 376242 dated 16 November 2018. The UMNO receipt, however, was dated 14 June 2016. The discrepancy in the date of issuance was striking.

[90] Apart from the UMNO receipt (D74), there were other three unused receipt books (IDD77, IDD78 and IDD79) that were also seized by MACC. These three unused receipt books preceded that of the receipt book that was allegedly used to issue the UMNO receipt (IDD 77 — Serial No 257901–257950; IDD78 — Serial No 310451–310500; IDD79 — Serial No 368401–368450). In light of the above discrepancies, Farahdzillah however agreed with the suggestion of the learned counsel that receipts were issued randomly, and not systematically.

A FINDING OF THE TRIAL JUDGE AT THE END OF THE PROSECUTION CASE

[91] At the close of the prosecution's case the learned trial judge considered the elements to be proved by the prosecution under s 165 of the Penal Code ('the PC'). Considering the evidence of all the prosecution's witnesses, the trial judge was satisfied that the prosecution had proved every element of the offence as follows:

(a) the accused, as the Minister for the Federal Territories, was a public servant;

(b) he had received RM2m from Tan Sri Chai for himself;

(c) there was no consideration given for the RM2m; and

(d) he knew that Tan Sri Chai had connections with his official functions.

[92] A careful reading of the learned trial judge grounds of judgment, contained the following observations and findings, at the end of the prosecution's case:

(a) the accused's appointment as a Federal Minister by His Majesty the King is apparent from the instrument of appointment dated 16 May 2013. That the accused held the position of the Minister for the Federal Territories from May 2013 to 2018 was established through the testimonies of Daman Huri (SP3), the division secretary (parliamentary and constitutional affairs) in the prime Minister's department and SP10, the accused's former senior private secretary. As a Minister, the accused would invariably be entrusted to perform public duties — (see p 30 para 69, grounds of judgment, *RRT Jld* 1) (GOJ *Jld* 1);

(b) it is evident that the accused was paid by the government to perform public duties in his capacity as the Minister for the Federal Territories, and is therefore, a public servant — refer to para 71, GOJ, *RRT Jld* 1;

(c) s 165 of the PC states that it is an offence if the accused had received a valuable thing 'for himself from any other person'. The crucial issue here is whether the accused had received the RM2m for himself. It was however put by the defence that the sum concerned was a donation for UMNO, and not for the accused's personal benefit — (refer to para 76, GOJ, *RRT Jld* 1);

(d) it is pertinent to firstly address the fact that the cheque was made payable to Tadmansori, and not in the accused's name. The preliminary issue is whether the payment could as such be deemed to benefit the accused and not the company — (refer to para 77, GOJ, *RRT Jld* 1);

(e) evidence led from the officer of the Companies Commission of Malaysia (SP1), establishes the fact that the accused is the majority shareholder of Tadmansori. He owns 99.9% of Tadmonsori's shareholdings, and that this had always been the state of affair from the time that the company was incorporated — (refer to para 78, GOJ, *RRT Jld* 1);

(f) the ownership of a company is determined through its shareholdings. The fact that the accused owned 99.99% of Tadmansori, and that the only other shareholder owns a minuscule 0.01% leads to the inevitable conclusion that the accused stands to benefits directly from any payment made to the company, being the largest shareholder. Evidence has also been led to show that the accused runs the company, and is the primary decision maker. He is essentially the alter ego of the company. Payment to Tadmansori would as such stand to benefit the accused — (refer to para 80, GOJ, *RRT Jld* 1);

(g) I will now come to the issue of whether the RM2m given was solicited by the accused for himself, or was a political donation for UMNO. Tan Sri Chai had unequivocally testified in examination-in-chief and under cross-examination, that the accused has solicited from him a political donation for UMNO. The accused told him that UMNO would require funds of between RM5m to RM6m for the by-elections. A lot of reliance was placed on the UMNO receipt to substantiate the accused's contention that the RM2m was indeed a political donation meant for UMNO and not for the accused. The defence team also referred to the prosecution's opening statement, where it was stated that the prosecution will lead evidence to show that the accused had solicited a political donation from Tan Sri Chai for the upcoming by-elections, and that Tan Sri Chai had given the money for that very purpose. The defence also highlighted that the investigating officer (SP23) had under cross-examination, admitted that his investigations revealed that both the accused and Tan Sri Chai had stated the same thing when their statements were taken by the MACC. Datuk Mohd Hasbi (SP6), Tadmansori's chief operating officer, had under cross-examination testified that he had called the accused to inform him that the cheque has been cleared, and that the accused had during that telephone conversation told him that the funds were meant for the by-elections — (refer to para 81, GOJ, *RRT Jld* 1);

(h) the UMNO receipt alone cannot be taken as incontrovertible proof that the RM2m was a political donation. I have grave reservation on the UMNO receipt for several reasons. Firstly, I find it incredible that Tan Sri Chai did not think it crucial to inform the MACC officers of the existence at the UMNO receipt, when he appeared before them several times for his statement to be taken. The prosecution had during re-examination showed Tan Sri Chai the statements that he had made to

the MACC on the three occasions that he was there, to refresh his memory whether he had raised the issue of the receipt. It confirmed that he never did. Even if assuming that he had only found the UMNO receipt after MACC had completed its investigation on him, one would have expected him to inform the MACC the minute he found the UMNO receipt. Tan Sri Chai himself testified that he had known the accused for a long time and has clearly developed a closed relationship with the accused. One would have expected him to seize the opportunity to exculpate the accused, and not merely keep the UMNO receipt (refer to para 85, GOJ, *RRT Jld* 1);

(i) I would also expect Tan Sri Chai to have given the UMNO receipt to the relevant employee in Aset Kayamas, namely Lai Vui Kong, Aset Kayamas' financial controller (SP16), as the latter was the one that oversaw the preparation of the cheque and handed it over to Tan Sri Chai. If Aset Kayamas had issued the RM2m as political donation, it would have been necessary for the company to have a copy of the UMNO receipt for auditing and record purposes. I find it highly questionable that was not done particularly if Tan Sri Chai had indeed received the UMNO receipt from the accused two days after he had given the cheque — (refer to para 86, GOJ, *RRT Jld* 1);

(j) it is a fact that Tan Sri Chai had known the accused for many years, and had dealt with each other during that time. It is also apparent that the accused had done favour for him, and he in turn too had done favours for the accused. Tan Sri Chai, in my opinion had demonstrated his biasness in favour of the accused in respect of the UMNO receipt. I will therefore disregard his testimony only in respect of the UMNO receipt — (refer to para 88, GOJ, *RRT Jld* 1);

(k) I had in taking into account all these factors, come to the conclusion that the UMNO receipt must be treated with absolute suspicion, and will not attach any weight to it. It was crisp and new — (refer to p 42 para 95 GOJ, *RRT* and p 40 para 92 (*Jld* 1)); and

(l) the only plausible conclusion is that the payment was meant to benefit the accused. The fact that the accused had specially instructed Tan Sri Chai to make the cheque payable to Tadmansori's and not to UMNO, could only mean that he intended to benefit himself — (refer to para 97 p 42, GOJ, *RRT Jld* 1).

[93] Having found the prosecution had made out a prima facie case, the learned trial judge then called upon the appellant to enter his defence.

THE DEFENCE

[94] In his evidence given under oath, the appellant narrated his defence. He stated that he had an illustrious political career. He had been a member of UMNO since 1969 and had risen the ranks steadily. He was a treasurer in 1988, a member of the Supreme Council in 1993 and 2004, and executive secretary in 1999, the Federal Territory Liaison Chairman in 2000, UMNO's secretary general from 2008–2018 and UMNO's treasurer again in 2018. He was appointed as Barisan National's Federal Territory Chairman in 2001.

[95] The appellant also stated that he was sworn in as senator in December 2000 and was subsequently appointed as the Deputy Minister in the Prime Minister's Department in September 2001. He also held several ministerial posts since; Minister in the Prime Minister's Department in November 2002, Tourism Minister in February 2006, and the Minister for the Federal Territories in 2013, a position which he held until 2018. He had been a member of Parliament for the Putrajaya constituency for many years, having succeeded in 11th, 12th, 13th and 14th General Elections.

[96] He was active in business before joining the cabinet in 2001, and claimed to have held positions in public and non-public listed companies. He admitted owning Tadmansori, and that it was a family-owned company that has seen its paid-up capital rose to RM100m from an initial RM100,000. The company's business is multi-fold: manufacturing, agriculture, food, real estate, hotel and investment. The appellant claimed that Tadmansori's achievements were the envy of many.

[97] The appellant stated that he had only embarked into politics to serve the nation and its people. He claimed that the charge levelled against him is irrelevant, and a conspiracy designed by another political party to bring UMNO and Barisan Nasional down, as he holds prominent positions and is seen as their funder. In his own words: 'So to kill me is to kill UMNO/Barisan Nasional'. He asserted that he had given an undertaking to give financial support to UMNO as its treasurer, an obligation that he claimed to have started back in 1988 when he was UMNO's youth's treasurer. He claims that UMNO still owes him a sum to the tune of RM17m.

[98] The appellant reiterated that he was already a successful businessman before joining the Cabinet in 2001. He was prepared to produce his 'declaration of asset' for 2001, 2006, 2013 and 2015 ('the declaration') that were submitted to the prime Ministers then, to prove his wealth. The appellant had at this point during the trial, requested that the proceedings be done in camera, pursuant to s 15(1) of the Courts of Judicature Act 1964 ('the CJA 1964'). The appellant was apprehensive of his assets and that of his family's

safety. However, the appellant's application was dismissed by the learned trial judge. The appellant subsequently opted not to tender the declarations as defence exhibit in light of the dismissal by the trial judge to hear the proceedings in camera. He had nevertheless orally testified the value of his assets declared, which were RM938,643,566.16 in 2001, RM711,325,822 in 2006, RM691,770,000 in 2013 and RM782,748.061 in 2016. He said RM2m was merely pocket money to him.

[99] He had in his capacity as the Federal Territories Minister obtained the Cabinet's approval to allow DBKL to enter into joint ventures with developers when the affordable housing project was to be carried out in the Federal Territories in 2013. This method had enabled DBKL to do outright sales of its land to the developers, who would then develop them based on what has been agreed upon. There were other advantages. His ministry, for example, would not require funding from the government, and that the developers would need to handle any problems involving squatters on the land bought, which were then one of the thorny issues. The appellant claimed that this method would not only fulfil the housing quota set by the government, but would also increase DBKL's coffers.

[100] The appellant had known Tan Sri Chai for more than thirty years, dating back to the days they had dealings in the logging business. He had approached Tan Sri Chai to take part in the affordable housing projects, as he deem the latter to be a capable developer.

[101] The appellant also acknowledged and confirmed the various correspondences and proceedings on Aset Kayamas's dealing with DBKL. He maintained that the whole process on Aset Kayamas' purchase of the land and the project was done legitimately, and he had not committed anything illegal or extraordinary. He had for instance approved Aset Kayamas' request to defer payment of the deposit, as the company's request to reduce the value of the land would take time. He, maintained that, at no time did he interfere with the valuation of the land as it was under the jurisdiction of the government's valuation department. He asserted that the set procedures on approving Aset Kayamas's various requests were dutifully adhered to, irrespective of the fact that he was the Minister and was in favour of the requests.

[102] He admitted to soliciting from Tan Sri Chai for donations in early June 2016 to finance the two by-elections. These by-elections for the parliamentary seat of Sungai Besar and Kuala Kangsar became necessary after the members of Parliament for both constituencies perished in a helicopter crash in Sarawak. As the chairman of UMNO and Barisan Nasional Federal Territories division, it is his responsibility to raise funds for these by-elections. He did request Tan Sri Chai to donate between RM5m to RM6m initially but Tan Sri Chai did not

commit to that figure and merely said that he would donate later. Eventually Tan Sri Chai told the appellant that he would be donating a sum of RM2m but required some time to raise the funds. The appellant said he would advance the RM2m to UMNO first, as he trusted Tan Sri Chai to keep his pledge. The appellant admitted receiving the cheque for RM2m from Tan Sri Chai on 14 June 2016, but claimed that it was given quite late, as the by-elections were scheduled to be held on 18 June 2016.

[103] According to the appellant, donations are usually given in cash but claimed that Tan Sri Chai had found it difficult to raise RM2m in cash, and gave a cheque for RM2m instead. The appellant had requested Tan Sri Chai to make out the cheque to Tadmansori, as he had already used his own money for UMNO's by-election, especially in campaign expenses. He also stated that it is common knowledge within UMNO that he had often made advances to the party and would look for donations and sponsors for UMNO's activities.

[104] The appellant exhorted that he would not have requested Tan Sri Chai to make the cheque payable to Tadmansori had he intended to utilise it for himself, as the banking trails would be apparent. He was adamant that the RM2m was for UMNO's benefit, and that he never intended to pocket it for himself.

[105] The appellant explained that he had used UMNO's headquarters receipt for Tan Sri Chai's contribution, as the Federal Territory UMNO does not have receipt books. He had issued the UMNO receipt to Tan Sri Chai, but could not remember who wrote the details on the UMNO receipt, as he had only signed it in his capacity as the UMNO's Federal Territory Liaison Chairman. He had no knowledge as to why there was no duplicate copies of the UMNO receipt in the receipt book and pointed out that anyone working at the finance and administration department of the UMNO headquarters would have access to all the receipt books.

[106] The appellant further explained that, each UMNO and Barisan Nasional's state liaison would form their team for a by-election. Datuk Rizalman (SD3) was appointed as the head of operations for the Sungai Besar's by-elections by the UMNO's Federal Territory. Datuk Rizalman had initially discussed with the appellant's political secretary at the time, Datuk Mohd Rafi bin Alii Hassan (SD2) about the budget required to meet the expenditure of the Sungai Besar's by-election. The appellant subsequently met both of them. The budget of RM1,300,000 suggested by the duo was whittled down to RM1,013,200 by the appellant. A copy of the budget for the expenses was produced through Datuk Rizalman. It showed details of the items to be spent on the campaign. The appellant had advanced his own money amounting to

RM1,013,200. He gave the sum in cash to Datuk Mohd Rafi, who subsequently handed it over to Datuk Rizalman.

[107] Both Datuk Mohd Rafi and Datuk Rizalman testified that the appellant had never depended on funds from UMNO's headquarters to carry out UMNO's Federal Territory's political activities, and that he would either use his own money or money obtained through donations. Both Datuk Mohd Rafi and Datuk Rizalman echoed what the appellant had said on the funding arrangements for the Sungai Besar's by-elections.

[108] The appellant had in his capacity as the secretary general of UMNO and Barisan Nasional, appointed Datuk Zakaria bin Dullah (SD4) to assist in the election operations for the two by-elections. Datuk Zakaria bin Dullah (SD4) was the coordinator for the Barisan Nasional's youth volunteer project. Youths were recruited as volunteers for various community programs under this project. The youths were enlisted to help with the Sungai Besar's as well as Kuala Kangsar's by-elections. They were involved in numerous community programs, such as organising sports activities, breaking of fast events, distributing food and groceries to the community and so on. This project required funds.

[109] Datuk Zakaria had prepared a budget of RM1,007,600 involving 1,000 youths. A copy of the budget was tendered through him. The appellant had no issues with the budget proposed and advanced his own money by giving RM1,007,600 in cash to Datuk Zakaria. Similar to the testimonies of Datuk Mohd Rafi dan Datuk Rizalman, Datuk Zakaria too testified that the appellant had never received any funding from UMNO or Barisan Nasional, and that he had always used his own money.

FINDING OF THE TRIAL JUDGE AT THE CONCLUSION OF THE TRIAL

[110] As regard the accused's application to hold trial proceedings in camera pertaining to the declarations supposedly contained details of the accused's family assets, pursuant to s 15(1) of the Courts of Judicature Act 1964 ('the CJA 1964'), the learned trial judge held that the granting of the accused's application would be contrary to the interest of justice. Mindful of the fact that the accused was a former Federal Minister, and this case has garnered public interest, the learned trial judge opined that the public has a right to hear what the court hears and see what the court sees. Hence, the public would be able to appreciate any decision reached by the court, and not be kept guessing or speculate due to any evidence being kept out of public knowledge. On this aspect we are in agreement with the learned trial judge that the power to order proceedings in camera must be exercised sparingly and it is a case where it is

expedient in the interests of public safety, public security and property, and not in the interest of an individual. In the present factual matrix, we do not find that it is expedient that a trial in camera be allowed and that the apprehension that an exposure of one's wealth would expose oneself to becoming a victim of a crime, without more, is not sufficient to attract the protection of s 15 of the CJA.

[111] The learned trial judge had rejected the appellant's allegations that the charge against him is irrelevant and is a ploy by UMNO's and Barisan Nasional's rival political parties to upend them by targeting him. The learned trial judge had correctly, in our view stated that the accused's complaint is not novel. He is not the first politician charged for a criminal offence who has complained of a political conspiracy and conspiracy, ipso facto, is not a defence for which due weight ought the be unnecessarily placed.

[112] In respect of the giving and the receipt of the money, the learned judge took the view that the intention of the giver is immaterial and cannot form part of the consideration in concluding whether the offence under s 165 of the PC has been proved. And given that was the position the appellant's reliance on the evidence of Tan Sri Chai on the purpose for which the RM2m was given was misplaced. The evidence comes to naught according to the learned judge. The primary issue, according to the learned judge was whether the accused had accepted the RM2m for himself.

[113] The evidence that the appellant had accepted the sum of RM2m for himself according to the learned judge, was confirmed and supported by several evidence. First, there was no corresponding payment from Tadmansori to UMNO. In fact the appellant had clearly instructed Tan Sri Chai to make the cheque payable to Tadmansori. Tan Sri Chai, in his witness statement, confirmed, that the appellant had at a meeting, told him to issue the cheque in Tadmansori's favour. This fact was not contested by the defence when Tan Sri Chai testified. It is, according to the learned judge, apparent that the appellant had from the onset, wanted the payment to be made to Tadmansori. Further, as Tan Sri Chai had not committed on the exact amount of donation, it makes little sense for the appellant to have advanced a sum closer to the RM2m as it would also be presumptuous. Tan Sri Chai had only decided to give RM2m when he gave the cheque on 16 June 2016. On this aspect, reliance was placed on the authority of *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)* [1999] 2 MLJ 1 (HC) to underscore that the defence had failed to appropriately put the defence case to the prosecution's witness and thus the defence subsequent averments and submissions must accordingly be treated with suspicion and caution.

[114] As regards the UMNO receipt, the learned judge formed the view that the appellant's explanation that he had no knowledge why there was no duplicate copy of the UMNO receipt in the receipt book (ID76), and that it was not his duty to handle the receipt books, and that responsibility lies with the staff in the finance and administrative department of UMNO's headquarters was not convincing. Similarly, the appellant's explanation of the need to maintain confidentiality of the donation was of spurious nature and was a red herring of sorts. Accordingly, His Lordship ruled that no weight ought to be attached to the UMNO receipt. However, the learned trial judge ruled and admitted the other three receipt books as defence exhibits (IDD77–ID77, IDD78–ID78 and IDD79–ID79), as the receipt books were originals seized from the UMNO's headquarters.

[115] The appellant in his evidence had referred to UMNO financial statement for year 2019 and highlighted the auditor's remark at para 1(a), p 11, where it was stated that the financial statement was prepared based on a continuous effort basis, as UMNO's treasurer had given an undertaking to provide financial support to fulfil its responsibilities and to meet its liabilities. This remark serves to augment his assertion that he provides financial support to UMNO in meeting its obligation and liabilities. The learned trial judge in his finding stated that he was unable to appreciate the appellant's contention, as the by-election were held in 2016 whereas at that material time the accused was not the UMNO's treasurer. He only became the treasurer in 2018.

[116] As regards the two by-elections, the learned trial judge made a finding that since these two by-elections involved two other states, namely Selangor and Perak and not the Federal Territories, then it would have been the responsibility of the respective state's chairman and certainly not the appellant. Therefore, the appellant's contention, that he bore the responsibility to raise funds for the two by-elections could not be true.

[117] As to the budget sheet prepared by Datuk Rizalman, the learned judge concluded that he has grave doubts on the veracity of the budget sheets produced by both personalities as the same was a simple one-page budget itemising the twelve's items that he claimed to have been incurred and spent for the Sungai Besar's by-elections. Furthermore, the witness had admitted that he had prepared the budget sheet for the trial proceedings based on memory, as he had disposed of the original and any supporting receipts soon after the by-election ended. The budget sheet prepared by Datuk Zakaria, according to the learned judge suffered the same infirmity.

[118] The learned judge had also rejected the submission canvassed by the counsel for the appellant that the prosecution's failure to challenge the evidence of both Datuk Rizalman and Datuk Zakaria on the amount spent for the two

by-elections, and that they received cash totalling RM2,020,800 from the accused tantamount to an acceptance of their testimony. In this, learned judge took the view that the proposition set out by the apex court in the case of *Wong Swee Chin v Public Prosecutor* [1981] 1 MLJ 212 was a general rule and that it is ultimately the court's task to carefully evaluate all the evidence and determine its weight and the case of *Khee Thuan Giap v Public Prosecutor* [2019] 4 MLJ 651 was cited.

[119] In summary, the learned trial judge had arrived at the conclusion as follows:

(a) the appellant had pocketed the RM2m for himself;

(b) the appellant's contention that he is a person of high net worth and accordingly will not be easily enticed with what he considered a paltry sum of RM2m was not capable of belief as the sum of RM2m is a substantial amount of money even for a millionaire;

(c) the evidence of Datuk Rizalman and Datuk Zakaria were in all likelihood have been concocted after the event in an attempt to buffer the appellant's defence. Thus, the alleged advance of slightly more than RM2m for the by-elections were afterthoughts to give a figure closer to RM2m; and

(d) that Tadmansori was used as a facade, it is but for a conduit to receive the fruit of his crime.

[120] The appellant was found guilty of the charge and was convicted and accordingly sentenced.

THE APPEAL

[121] Before us learned counsel for the appellant had canvassed the following issues:

(a) the learned trial judge had erred in law and in fact when he failed to consider that the prosecution had failed to prove beyond reasonable doubt a key element in the charge that the RM2m was paid to the appellant for himself;

(b) the learned trial judge had erred in law and in fact when he failed to consider that the evidence of the prosecution witnesses (SP19, SP6 and SP23) supported the defence that the sum of RM2m was a political donation to UMNO for the two by-elections;

(c) the learned trial judge erred in law and in fact when he failed to consider that the failure of the respondent to re-examine the prosecution's star

witness, SP19, on his evidence in cross-examination that the sum of RM2m was a political donation to UMNO, amounted to an acceptance of SP19's testimony;

(d) the learned trial judge had erred in law and in fact when he failed to consider the evidence that the star prosecution witness, Tan Sri Datuk Chai Kin Kong (SP19) and the appellant had stated in their statements to the MACC during the investigation that the RM2m was a political donation to UMNO for expenses in the by-elections;

(e) the learned trial judge had erred in law and in fact when he failed to consider the evidence of the prosecution's star witness, SP19, on his evidence during cross-examination that he had received the UMNO official receipt (D74) two or three days after it was issued on 14 June 2016;

(f) the learned trial judge had erred in law and in fact when he held that the duplicate copy of the UMNO receipt (D74) was the only duplicate copy missing from the receipt book and that this had raised a red flag;

(g) the learned trial judge had erred in law and in fact when he failed to attach weight to the UMNO official receipt (D74);

(h) the learned trial judge had erred in law and in fact when he imported his own personal knowledge that the UMNO official receipt (D74) was 'crisp and new' when there was no evidence to this effect;

(i) the learned trial judge had erred in law and in fact when he failed to consider that where facts are open to two or more inferences, that which is in favour of the appellant should be adopted;

(j) the learned trial judge had erred in law and in fact when he failed to consider the fact that it was widely accepted that the appellant had frequently used his own funds to advance to UMNO, including expenses for by-elections; and

(k) the learned trial judge had erred in law and in fact when he failed to consider the evidence of the appellant, SD2, SD3 and SD4, which were not challenged by the respondent in cross-examination and amounted to an acceptance of their testimony.

OUR DECISION

[122] Before analysing the correctness of approach and accordingly the respective grounds advanced by the trial judge, it is appropriate for us to state that sitting in an appeal, we have no advantage of the audio visual that is enjoyed by the trial judge. That does not however mean that all findings of the trial judge could be lumped as findings of facts. The Federal Court, in a recent decision in *Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the*

estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67 had occasion to answer the question and provide a useful guidance to the courts below on the proper approach in dealing with the issue of appellate intervention premised on the 'plainly wrong' test. In gist, it is necessary in an appeal for the appellate court to determine whether the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. In that process, the appellate court is perfectly entitled to examine the process of evaluation of the evidence by the trial court — *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1 (FC). More importantly the 'plainly wrong' test is not intended to be used by an appellate court as a mean to substitute its own decision for that of the trial court on the facts. There are many facets upon which the decision may be said to be plainly wrong and that includes where crucial evidence had been misconstrued resulting in the uncertainty on one party's evidence; the consistency of the other party's evidence being disregarded and when a trial judge had so manifestly failed to derive proper benefit from the undoubted advantage of seeing and hearing witnesses at the trial, and in reaching his conclusion, has not properly analysed the entirety of the evidence which was given before him.

[123] Unfortunately the present appeal in one such case where the decision of the trial judge is plainly wrong. As we shall demonstrate crucial evidence were misconstrued by the learned judge resulting in a wrong conclusion. The finding of the learned judge on the crucial elements of the charge were not only unsupported by evidence but militate against them.

[124] In short, the central issue in this instant appeal is whether the learned trial judge correctly re-evaluated the evidence adduced by the appellant by weighing against the evidence adduced by the respondent at the end of prosecution's case.

[125] It is trite that, the burden of proof rests on the prosecution throughout the trial to prove its case in accordance with the provision of s 180(1) and (4) of the Criminal Procedure Code ('the CPC'). It is the duty of the trial court to undertake a maximum evaluation of the credibility and reliability of all the evidence adduced so as to determine whether each and every essential ingredient of the offence has been established, in order to make a finding whether or not the prosecution has made out a prima facie case against the accused (see *Public Prosecutor v Dato' Saidin bin Thamby* [2012] 3 MLJ 476). The court is not restricted to merely evaluating the evidence adduced by the prosecution or the defence in isolation or one without the other. It is nevertheless the bounden duty of the court as enjoined in s 182A of the Criminal Procedure Code to also carefully re-evaluate the whole of the evidence of the prosecution in conjunction with the defence evidence to determine upon whether a reasonable doubt has been raised as to the guilt of

the accused. The principle is clearly enshrined in the case of *Public Prosecutor v Bernadito L Alenjandro Jr* [2015] 1 LNS 1507 where the court held that:

> We, therefore, find no merit in the argument that the trial judge made two inconsistent findings, one at the end of the prosecution case and another at the end of the defence case because it is trite that at the end of the defence case the trial judge must re-evaluate all the evidence of the prosecution and defence and ask himself whether the prosecution had proven its case beyond reasonable doubt or as the case may be whether the defence had cast a reasonable doubt on the prosecution case (see *Public Prosecutor v Seow Wei Hoong* [2002] MLJU 468; [2002] 1 LNS 338). It is obvious that a finding made at the end of the prosecution case is not necessarily immutable because if this is so, it would not be necessary to re-evaluate all the evidence at the end of the defence case and in so doing may make a finding which is at variance with an initial finding made at the question of inconsistency does not, therefore, arise.

[126] In the context of the present case, the four ingredients of the offence are as follows:

(i) the appellant as the Minister for Federal Territories was a public servant;

(ii) the appellant had received for himself RM2m from Tan Sri Chai Kin Kong;

(iii) there was no consideration for the RM2m; and

(iv) the appellant knew Tan Sri Chai had connections with his official functions.

[127] Applying the ingredients to the facts of this case, one of the essential elements of the offence which must be proved by the prosecution is that the sum of RM2m was paid to the appellant for himself and not for any other person or entity. This is undoubtedly a key element of the charge. If the key element in the charge is not proved beyond reasonable doubt, then the appellant ought to be acquitted and discharged without his defence being called (*Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169). Here, we find the learned judge's conclusion that ingredient No (ii) above had been established beyond reasonable doubt, is untenable.

[128] We sustain the submission by learned counsel for the appellant that the learned trial judge has erred in law and in fact when he failed to consider the evidence of the prosecution witness, SP19 (Tan Sri Chai), SP6 (chief operating officer of Tadmansori) Dato' Hasbi bin Jaafar and SP23 (investigating officer) Muhammad Saad bin Bordani, each of which and cumulatively had supported the defence's contention that the sum of RM2m was a political donation to UMNO for the two by-elections.

[129] The learned trial judge stated in para 81 as follows:

[81] I will now come to the issue of whether the RM2m given was solicited by the accused for himself or was a political donation for UMNO. *Tan Sri Chai had unequivocally testified* in examination-in-chief and under cross-examination, that the accused had solicited from him a political donation for UMNO. The accused told him that UMNO would require funds of between RM5m to RM6m for the by-elections. A lot of reliance was placed on the UMNO receipt to substantiate the accused's contention that the RM2m was inded a political donation meant for UMNO, and not for the accused. The defence team also referred *to the prosecution's opening statement* where it was stated that the prosecution will lead evidence to show that the accused had solicited a political donation from Tan Sri Chai for the upcoming by-elections, and that Tan Sri Chai had given the money for that very purpose. The defence also highlighted that the *investigation officer* (SP23) had under cross-examination, admitted that his investigations reveal that both the accused and Tan Sri Chai had stated the same thing when their statements were taken by the MACC Datuk Mohd Hasbi (SP6), Tadmansori's chief operating officer, had under cross-examination testified that he had called the accused to inform him that the cheque has been cleared, and that the accused had during that telephone conversation told him that the funds were meant for the by-elections.

[130] The relevant evidence by Tan Sri Chai (SP19) can be referred to at para 47 of his witness statement (P73) where he said:

47. Berkenaan dengan bayaran cek tersebut, saya sahkan pembayaran wang RM2 juta tersebut adalah sumbangan kepada Tengku Adnan kerana beliau meminta sumbangan tersebut daripada saya untuk dana politik. Seingat saya, Tengku Adnan ada menyatakan bahawa UMNO memerlukan dana politik lebih kurang RM5–6 juta untuk pilihan raya kecil. Beliau hanya bertanya kepada saya boleh bagi. Saya pula tidak menjanjikan berapa jumlah yang akan diberikan tetapi akan menyerahkan cek sumbangan tersebut kepada beliau apabila saya sudah mempunyai wang.

[131] Learned counsel for the appellant was not wrong in describing SP19 as being a star witness for the prosecution. SP19 has however clearly confirmed that the sum of RM2m was a political donation to UMNO and not meant for the appellant. SP6 Dato' Hasbi bin Jaafar was also told by the appellant that the RM2m cheque was a political donation to be utilised for the Sungai Besar dan Kuala Kangsar by-elections. In short, the purpose for which the money was to be utilised for the two by-elections was made clear to SP19. This can be seen in the evidence of Tan Sri Chai (SP19) on 17 July 2019 at p 480 of the *Rekod Rayuan (Baru) Jld* 2(3):

DT: Saya difahamkan bahawa apa yang Dato' Seri Tengku Adnan telah memaklumkan kepada Tan Sri, dan Tan Sri sila sahkan betul atau tidak, beliau katakan ada short fall, ada kekurangan lebih kurang RM5 juta untuk dua pilihanraya kecil yang dekat dah iaitu pada bulan Jun 2016 dan beliau tanya Tan Sri sama ada Tan Sri boleh membuat sumbangan kepada UMNO. Can you confirm was what that is true?

SP19: Ya, ada.

DT: Jadi dari permulaan, from the start Tan Sri tahu bahawa sumbangan ini adalah sumbangan politik untuk parti UMNOlah untuk dua by-election. Sumbangan bukanlah untuk Dato' Seri Tengku Adnan sendiri. You know that from the beginning?

SP19: Ya, saya setuju.

DT: Para 49 Tan Sri, kemudian saya memutuskan ... Can you please translate 49 and so?

SP19: Ya.

At p 486 of the Record Rayuan (Baru) Jld 2(3).

DT: Yang Arif dengan rujuk saksi kepada P15 p 11, the cheque. Ada? Tan Sri, adakah ini untuk sumbangan RM2m kepada dana politik UMNO?

SP19: Ya.

[132] In supporting the evidence of Tan Sri Chai (SP19), Datuk Mohd Hasbi bin Jaafar (SP6), the group chief operating officer of Tadmansori, testified that after he received a WhatsApp text from the appellant showing the deposit slip (P21) of the RM2m from Aset Kayamas Sdn Bhd to Tadmansori Holding Sdn Bhd he was told by the appellant that the RM2m cheque was a political donation for Sungai Besar's and Kuala Kangsar's by-elections. This can be seen in the evidence of Datuk Mohd Hasbi bin Jaafar (SP6) on 3 July 2019 at p 61 of the *Rekod Rayuan (Baru) Jld* 2(1):

DT: Kamu telah bekerja dengan Datuk Seri Tengku Adnan untuk 24 tahun sekurang-kurangnya lah ya kamu kenal dia. Adakah kamu tahu terdapat dua pilihanraya kecil yang telah dijalankan pada bulan Jun 2016?

SP6: Ya.

DT: Adakah kamu tahu pilihanraya kecil tersebut pada 18 Jun 2016 untuk pilihanraya kecil Sg Besar di Selangor dan Kuala Kangsar di Perak, tahu?

SP6: Ya, tahu.

DT: Saya merujuk Datuk Hasbi kepada pernyataan saksi kamu perenggan yang ke-7, P21. Saya rujuk kamu kepada tarikh yang tertera di atas deposit cek 14 Jun 2016. Tadi kamu katakan kamu tahu tentang by-election pada 18 Jun 2016. Adakah kamu terima Whatsapp tersebut dari Datuk Seri Tengku Adnan pada 14 Jun hari yang sama atau next day, boleh tak?

SP6: Saya tak berapa ingat tapi saya rasa hari yang sama.

DT: 14 Jun 2016 ialah hari Selasa, sementara pilihanraya kecil 18 Jun 2016 hari Sabtu. Soalan saya, selepas kamu menerima Whatsapp tersebut daripada Datuk Seri Tengku Adnan, adakah kamu berbual telefon dengan beliau selepas follow up atau selepas check, ada?

SP6: Ya, selepas follow up selepas forward ada.

DT: Awak ada cakap telefon dengan Datuk Seri?

SP6: Ada.

DT: Selepas Whatsapp ya, dan apa yang kamu telah katakan?

SP6: Saya sebut yang saya ada menerima daripadanya salinan Whatsapp tersebut dan selepas itu saya tanyalah untuk Tadmansori Holding Sdn Bhd untuk nak confirm dengan Tadmansori Holding Sdn Bhd dimasukkan ke tak ke Tadmansori Holding Sdn Bhd slip itu.

DT: Adakah kamu mengesahkan bahawa funds telahpun dimasukkan kemudian atau tidak?

SP6: Ya, selepas itu saya bercakap semula mengatakan cek telah clear di dalam syarikat.

DT: Sekarang saya nak tanya soalan khusus sila dengar betul-betul atas arahan saya, *semasa perbualan telefon tersebut adakah Datuk Seri Tengku Adnan menyebut kepada kamu bahawa wang tersebut ialah dengan izin political donation untuk kedua-dua pilihanraya kecil yang dimaksudkan?*

SP6: Ya, benar.

[133] In this respect both SP19 Tan Sri Chai and SP6, Datuk Mohd Hasbi bin Jaafar were prosecution witnesses. Thus, we agree with the appellant's counsel that it is trite that the prosecution is bound by the evidence of its own witnesses (see *Lim Guan Eng v Public Prosecutor* [1998] 3 MLJ 14).

[134] It is our considered view that the learned trial judge had failed to evaluate and give attention to the evidence of the investigating officer (SP23) who had not ruled out that the RM2m cheque (P15) was given as a political donation for the expenses of the two by-elections. We also find that the learned trial judge had failed to test and evaluate the entire evidence especially the evidence of SP19, SP6 and SP23 that the RM2m was meant for the two by-elections.

[135] Another crucial issue which, in our view, the learned trial judge had failed to consider was the failure of the prosecution to re-examine the prosecution's star witness, SP19, on his evidence in cross-examination that the sum of RM2m was a political donation to UMNO. It is undisputed that SP19 was the star witness of the prosecution and the entire version of the prosecution's case was built largely upon his testimony. It is trite that the failure by the prosecution to re-examine on this pivotal issue amounts to an acceptance of the witness testimony. In similar vein, no suggestion was made by the prosecution that SP19 was dishonest or untruthful. No attempts too were made by the prosecution to impeach SP19 or treat him as a hostile witness. In fact, whilst a judge was entitled to accept one part of the evidence and disregard the other part of the evidence, curiously the learned judge had decided to reject the evidence of SP19 pertaining to the receipt, that too by extrapolation of evidence not proved, that the receipt was 'new and crisp' which the same was not even faintly suggested by the prosecution.

[136] At the risk of repetition, in his written grounds of judgment, the learned judge had not directed his mind on the failure of the prosecution to re-examine SP19 on his evidence in cross-examination that the RM2m was a political donation to UMNO. We find that such a failure on such a critical point/issue amounted to a non-direction which rendered the conviction unsafe.

[137] Again, in respect of the official receipt (D74), SP19 in re-examination reiterated that he received the receipt (D74) on 16 or 17 June 2016. From the records of appeal, we found that this direct evidence was neither contradicted nor disproved and thus remained unchallenged by the prosecution. Thus, the prosecution's submission that D74 was only issued in November 2018 after the appellant was arrested and that D74 was a forged document remains unproved. The learned trial judge, on this issue had decided to disregard the evidence of SP19 on the receipt. The learned trial judge, at para 88 had stated:

> 88 ... Tan Sri Chai, in my opinion, had demonstrated his biasness in favour of the accused in respect of the UMNO receipt. *I will therefore disregard his testimony only in respect of the UMNO receipt*.

[138] We are not persuaded by the learned trial judge reasoning. In our judgment, based on these set of facts, the learned trial judge should have adopted an inference in favour of the defence.

[139] With respect, we are of the view that the failure on the part of the learned trial judge to consider the foregoing unchallenged direct evidence amounts to a serious misdirection which warrants appellate intervention (see *Ong Teik Thai v Public Prosecutor* [2017] 4 MLJ 421).

[140] As regard the receipt book (P76), Nik Muhamad Faiez bin Idris (SP20) and the investigating officer (P23) had given evidence that there were two missing receipts from the receipt book (P76) ie Receipt No 376241 (D74) and Receipt No 376244. This is contrary to the finding of the learned trial judge when he held that the duplicate copy of the UMNO receipt (D74) was the only duplicate copy missing from the receipt book and that he said this had raised a red flag.

[141] Before us the prosecution had submitted that the RM2m was paid for the appellant for himself as the cheque was credited into the account of Tadmansori and there was no corresponding payment to UMNO from the Tadmansori Holding. It was also urged upon us that the whole of the defence of the appellant was an invention. We should also note that this ground appears to be the grounds upon which our learned brother had relied upon to find that the crucial ingredient of the offence had been established. With respect, we find such submission and conclusion untenable. In our judgment, the crediting of the cheque into the account of Tadmansori did not lead to an irresistible

conclusion that the appellant had committed the offence charged, and this per se, is insufficient to convict the appellant as, upon a proper evaluation, this evidence amounts to no more than circumstantial evidence, which does not point irresistibly to the guilt of the appellant. Upon full scrutiny of the prosecution's evidence, we are of the view that the defence contention on the purpose for which the money was to be utilised was not a mere invention by the appellant. At any rate it creates a doubt as to whether the appellant had accepted or received the money for himself. It is trite that when there are two possible conclusions that could be made from a set of facts, an inference favourable to the accused should be made — *Public Prosecutor v Kasmin bin Soeb* [1974] 1 MLJ 230; *Samundee Devan a/l Kerishnan Muthu v Public Prosecutor* [2009] 1 MLJ 697; and *Alan Soh Heng Liang v Public Prosecutor* [2020] MLJU 2151.

CONCLUSION

[142] In the circumstances, and for all the above reasons we have alluded to, we concluded that there were serious misdirections and non-directions committed by the trial judge on the law and evidence warranting appellate intervention. As such, we are of the view that it would be unsafe to sustain the conviction on the charge.

[143] Accordingly, we allowed the appeal and set aside the conviction and sentence imposed on the appellant by the High Court. The appellant is hereby acquitted and discharged.

Appeal allowed.

Reported by K Selvaraju